

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

ISSUE #1

~~C. no facilities, including poles and wires for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Tract, and to the extent permitted by law, no external or outside antennas of any kind shall be maintained on any Tract or Improvement; and~~

D. no well, pump, shaft, casing, or other facility for the removal of subsurface water shall be placed or maintained on any Tract, and no boring, drilling, removal of, or exploration for, subsurface water shall be conducted on any Tract.

Each Owner and Resident hereby acknowledges that Declarant may grant the right to other Persons to construct and maintain above ground power lines, lift stations and other facilities for the operation and maintenance of utilities to the Property or any part thereof. Each Owner and Resident also acknowledges that Declarant, or some other Person or Persons at Declarant's direction, may drill water wells for the benefit of the Area of Common Responsibility.

Section 8.03. Forest Preservation shall be governed by Pearland City Ordinance.

Section 8.04. Keeping of Animals shall be governed by Pearland City Ordinance.

Section 8.05. Placement of Signs shall be governed by Pearland City Ordinance and the Design Criteria. Such Design Criteria shall not apply to the activities of Declarant, its agents or assigns.

Section 8.06. Temporary Buildings. No mobile home, trailer, tent, garage, or temporary building, and no building in the course of construction, shall be used, temporarily or permanently, as a residence on any Tract. This restriction shall not apply to manufactured housing approved by the CWSC.

Section 8.07. Disposition of Trash and Other Debris. No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Tract, except building materials during the course of construction, unless such materials are visually screened in a manner approved by the CWSC. During the course of construction, each Owner shall insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner. No burning of trash and no accumulation or storage of litter, junk, or trash of any kind shall be permitted on any Tract. Every Owner must comply with all applicable state and federal regulations with respect to storage and disposal of construction materials and debris, including but not limited to EPA regulations regarding storm water discharge. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, trash containers may be placed in the open on any day that a pick-up is to be made. At all other times, such trash containers shall be stored so that they cannot be seen from adjacent and surrounding property or roads. The CWSC may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, location and type of trash containers permitted and the screening of such containers on the Property. The Board and/or the CWSC may adopt and promulgate actions to be taken in the case of repeated violations of this Section, including but not limited to fines being imposed after notification of such violations.

Sec. 8.02. (p. 47): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:

Tract, and to the extent permitted by law, no external or outside antennas of any kind shall be maintained on any Tract or Improvement; and D. no well, pump, shaft, casing, or other facility for the removal of subsurface water shall be placed or maintained on any Tract, and no boring, drilling, removal of, or exploration for, subsurface water shall be conducted on any Tract.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).